

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

VILMA RODRIGUEZ,)	
)	
Plaintiff,)	C.A. No.
)	
vs.)	
)	<u>NOTICE OF REMOVAL</u>
BURLINGTON STORES, INC.,)	
BURLINGTON COAT FACTORY OF)	
TEXAS, INC. and BURLINGTON COAT)	
FACTORY DIRECT CORPORATION,)	
Defendants)	

Defendants, Burlington Stores, Inc. (“BSI”), Burlington Coat Factory of Texas, Inc. (“BCFT”) and Burlington Coat Factory Direct Corporation (“BCFD”) (hereinafter collectively referred to as the “Burlington Defendants”), hereby remove this civil action bearing Index No. 807641/2022E from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1446 and 28 U.S.C. §1332.

1. Plaintiff, Vilma Rodriguez (“Plaintiff”), commenced this action in the Supreme Court of the State of New York, County of Bronx by filing a Civil Action Complaint (“Complaint”) on or about May 19, 2022. A copy of the Complaint is attached hereto as Exhibit “A” without admission or adoption.

2. Plaintiff’s Complaint filed in the Supreme Court of the State of New York, County of Bronx, with Index No. 807641/2022E was directed against the Burlington Defendants.

3. Plaintiff seeks to recover damages for severe and permanent injuries allegedly caused by a defective condition at the Burlington Coat Factory Store located at 700 Exterior Street, Bronx, NY. (*See* Exhibit “A”).

4. The Plaintiff is a resident of the County of Bronx, State of New York. *See* Exhibit “A”).

5. Plaintiff’s current address is 751 Walton Ave, Apt. 27B, Bronx, NY 10451 (Bronx County) and he has lived at that address since 2003, according to “PeopleMap Report (Premier)” provided by WESTLAW (Thompson Reuters).

6. Phone numbers associated with the Plaintiff include multiple phone numbers with area code “646 and “718” which are all phone numbers issued in the five boroughs of New York City, State of New York, according to “PeopleMap Report (Premier)” provided by WESTLAW (Thompson Reuters).

7. Plaintiff’s Social Security Number, XXX-52-XXXX, was issued in the State of New York between 1972 and 1973, according to “PeopleMap Report (Premier)” provided by WESTLAW (Thompson Reuters).

8. Plaintiff is a registered voter in the State of New York since 1992.

8. For diversity purposes, it is well-established that the citizenship of an individual is equivalent to his or her domicile. Yonofsky v. Wernick, 362 F. Supp. 1005 (S.D.N.Y. 1973); Broadstone Realty Corp. v. Evans, 213 F. Supp. 261, 265 (S.D.N.Y. 1962). Domicile is defined by residence in fact along with the intent to remain there or to return when absent. Kaufman & Broad v. Gootrad, 397 F. Supp. 1054, 1055 (S.D.N.Y. 1975). An individual’s residence at the time a lawsuit is commenced provides *prima facie* evidence of their domicile. Broadstone Realty Corp. v. Evans, 213 F. Supp. 261, 265 (S.D.N.Y. 1962). Domicile must be established by the totality of the evidence of a person’s contacts with the state and intent to remain there. *See, e.g., supra., Broadstone Realty Corp. v. Evans, supra.*

9. Based on the totality of Plaintiff’s aforementioned contacts with the State of New York, Plaintiff is a citizen of the State of New York.

10. Defendant, Burlington Stores, Inc., is a foreign corporation organized and existing under the laws of the State of Delaware which has its principal place of business located at 1830 Route 130 North, Burlington, New Jersey 08016. Defendant, Burlington Stores, Inc. is a citizen of the State of Delaware and the State of New Jersey is not a citizen of the State of New York.

11. Defendant, Burlington Coat Factory of Texas, Inc., is a foreign corporation organized and existing under the laws of the State of Florida, and has its principal place of business located at 1830 Route 130 North, Burlington, New Jersey 08016. Defendant, Burlington Coat Factory of Texas, Inc. is a citizen of the State of Florida and the State of New Jersey is not a citizen of the State of New York.

12. Defendant, Burlington Coat Factory Direct Corporation, Inc., is a foreign corporation organized and existing under the laws of the State of New Jersey, and has its principal place of business located at 1830 Route 130 North, Burlington, New Jersey 08016. Defendant, Burlington Coat Factory Direct Corporation, is a citizen of the State of New Jersey is not a citizen of the State of New York.

13. Pursuant to Plaintiff's Complaint (Exhibit "A", ¶¶ 67) by reason of Defendants' alleged negligence, recklessness and carelessness, Plaintiff was rendered sick, sore, lame, disabled and was seriously and permanently injured and so remains; suffered and will continue to suffer agony in body and mind; was unable to pursue her regular activities for a long period of time; was and will be compelled to secure medical aid and medicines in an effort to cure or minimize her injuries and was compelled to expend and become liable for diverse sums of money in an effort to cure herself of her injuries, and since some of her injuries are believed to be of a permanent and lasting nature, upon information and belief, she will continue to be so deprived and is liable for damages in the future.

14. Based on the alleged damages averments contained in the Complaint (Exhibit “A”, ¶¶ 8-12), logically the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000) exclusive interest and costs as this case allegedly involves serious, severe permanent physical injuries leaving Plaintiff unable to perform normal activities.

15. This Honorable Court has original jurisdiction pursuant to 28 U.S.C. § 1332.

16. Since Plaintiff and Defendants are citizens of different states, this dispute involves controversies between citizens of different states and therefore is removable pursuant to 28 U.S.C. § 1441.

17. Pursuant to 28 U.S.C. § 1446(a) this Notice of Removal is filed in the United States District Court for the Southern District of New York, which is the district in which the State Court Action is pending.

18. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) and 28 U.S.C. § 1446(b)(3) as it was filed within thirty (30) days after Defendants received a copy of the initial pleading (original Complaint at Exhibit “A”) setting forth a claim for relief upon which the action or proceeding is based.

19. The Burlington Defendants will file on this date a copy of this Notice of Removal with the Clerk’s Office of the Supreme Court of the State of New York, County of Bronx as required by 28 U.S.C. § 1446(c).

20. The Burlington Defendants will on this date give written notice of the filing of this Notice of Removal to Plaintiff as required by 28 U.S.C. § 1446(c).

WHEREFORE, Defendants, Burlington Stores, Inc., Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Direct Corporation, respectfully request that the above-entitled action now pending in the Supreme Court of the State of New York, County of Bronx, be removed therefrom to this Court.

SPECTOR GADON ROSEN VINCI P.C.

Dated: June 20, 2022

By: /s/ Randi A. Wolf
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Burlington Coat Factory Direct Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

VILMA RODRIGUEZ,)	
)	
Plaintiff,)	C.A. No.
)	
vs.)	
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)	<u>CERTIFICATE OF SERVICE</u>
BURLINGTON STORES, INC.,)	
BURLINGTON COAT FACTORY OF)	
TEXAS, INC. and BURLINGTON COAT)	
FACTORY DIRECT CORPORATION,)	
Defendants)	

I hereby certify that on June 20, 2022, 2022 I served the foregoing Notice of Removal on all counsel of record by causing true and correct copies thereof to be sent via U.S. Mail., postage prepaid, addressed to the following:

Laurence D. Rogers, Esquire
Law Offices of Laurence Rogers
70 E. Sunrise Highway, Suite 500
Valley Stream, NY 11581
Attorneys for Plaintiff

SPECTOR GADON ROSEN VINCI P.C.

Dated: June 20, 2022

By: Randi A. Wolf
Randi A. Wolf, Esquire